

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

MICHAEL BIES,

Petitioner,

-vs-

MARGARET BAGLEY, Warden,

Respondent.

:

Case No. 1:00-cv-682

:

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

:

ORDER DISSOLVING STAY AND SETTING SCHEDULE

This case came on for scheduling conference by telephone at 9:00 A.M. on Friday, July 16, 2010. Randall Porter represented Petitioner and Charles Wille represented Respondent.

Attached to the Joint Motion for Status Conference (Doc. No. 152) is the June 18, 2010, Decision of Hamilton County Common Pleas Judge Beth A. Myers finding Petitioner to be mentally retarded according to the standard adopted in *Atkins v. Virginia*, 536 U.S. 304 (2002), and *State v. Lott*, 97 Ohio St. 3d 303 (2002); vacating his death sentence; and re-sentencing him to life imprisonment with parole eligibility at thirty years. On behalf of Respondent and the State of Ohio, Mr. Wille confirmed that the State will not appeal that Decision and the judgment is accordingly final. Therefore the stay of these proceedings pending completion of the state court proceedings is DISSOLVED.

Because Petitioner is no longer under a sentence of death, he is no longer entitled to appointed counsel under 18 U.S.C. § 3599. Mr. Porter has indicated the willingness of the Ohio Public Defender to continue its representation of Petitioner. Attorney S. Scott Haynes shall notify the Court not later than August 1, 2010, of whether he wishes to continue to be appointed counsel for Petitioner in this

case.

In light of the vacation of the capital sentence, Petitioner shall, not later than August 6, 2010, file a motion to amend the Petition to delete those claims relating to the sentencing phase of the case which have become moot by virtue of the state court decision or which Petitioner does not otherwise intend to pursue.

Counsel believe that all discovery sought by Petitioner and agreed to by Respondent has been completed. Either party may file a motion for evidentiary hearing in this matter not later than September 1, 2010. If no such motion is filed, the Court will deem the case submitted for decision as of that date.

July 16, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge